IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 2025-125411

In the matter between:

THE MINISTER OF HEALTH	First Applicant
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Second Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
SOLIDARITY TRADE UNION	Fourth Respondent
BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Fifth Respondent
SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM	Sixth Respondent
HOSPITAL ASSOCIATION OF SOUTH AFRICA	Seventh Respondent
THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	Eighth Respondent
HEALTH FUNDERS ASSOCIATION	Ninth Respondent

In re:

Case No: 2024-057449

SOLIDARITY TRADE UNION	Applicant
and	
THE MINISTER OF HEALTH	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
THE DIRECTOR GENERAL, NATIONAL DEPARTMENT OF HEALTH	Third Respondent
THE MINISTER OF FINANCE	Fourth Respondent
NATIONAL TREASURY	Fifth Respondent

and

Case No: 2024-058172

BOARD OF HEALTHCARE FUNDERS OF SOUTHERN AFRICA NPC	Applicant
and	
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
THE MINISTER OF HEALTH	Second Respondent

and

Case No: 2024-111209

SOUTH AFRICAN PRIVATE PRACTITIONERS FORUM Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

THE MINISTER OF HEALTH Second Respondent

THE MINISTER OF FINANCE Third Respondent

NATIONAL TREASURY Fourth Respondent

and

Case No: 2025-020969

HOSPITAL ASSOCIATION OF SOUTH AFRICA Applicant

and

THE MINISTER OF HEALTH First Respondent

THE MINISTER OF FINANCE Second Respondent

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Third Respondent

and

Case No: 2025-045340

THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC Applicant

and

THE MINISTER OF HEALTH	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Third Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Fourth Respondent

and

Case No: 2025-083348

HEALTH FUNDERS ASSOCIATION	Applicant

and

THE MINISTER OF HEALTH	First Respondent
THE MINISTER OF FINANCE	Second Respondent
NATIONAL TREASURY	Third Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent

HFA'S ANSWERING AFFIDAVIT IN THE STAY AND CONSOLIDATION APPLICATION

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I, the undersigned,

THONESHAN NAIDOO

state under oath as follows:

1. I am the Chief Executive Officer of the Health Funders Association ("*HFA*"), which has its registered address at Country Club Estate Office Park, Building 2, 21 Woodlands Drive, Woodmead, Sandton.

2. I am duly authorised to depose to this affidavit on behalf of the HFA.

3. The facts contained in this affidavit are true and correct and, save where the context indicates otherwise, are within my personal knowledge and belief. Where I make legal submissions, I do so on the advice of the HFA's representatives, which advice I believe to be correct.

INTRODUCTION

4. The Minister and the Director-General of Health have applied for orders staying various applications, including the application brought by the HFA, which challenge the constitutional validity of the National Health Insurance Act 20 of 2023 ("*the NHI Act*").

5. They ask the Court to grant the stay pending the final determination of various other applications which attack the President's decision to assent to the NHI Act.

6. The applicants also seek an order consolidating the applications, including the HFA's application, which challenge the constitutional validity of the NHI Act.

7. The HFA opposes both aspects of this application, and this affidavit serves as the HFA's answering affidavit in the stay and consolidation application.

8. As I shall explain, if the stay application is granted, it is likely to endure for many years. During those years, the President will be at liberty to bring the NHI Act into force, and the Minister will be at liberty to implement its provisions.

9. The Minister's narrow undertaking not to publish regulations under section 33 of the NHI Act for as long as the stay is in place is, in effect, meaningless. By then, the implementation of the other provisions of the NHI Act will have caused substantial harm and prejudice to the healthcare sector, medical schemes, their beneficiaries and the public.

10. The HFA also opposes the consolidation application. As appears more fully below, consolidation would be manifestly inconvenient. The effect of a formal consolidation would be to make the evidence in one matter evidence in all the consolidated matters. It would also be to ensure that every matter can only progress as quickly as that which progresses the slowest. In other words, an interlocutory dispute in one application will have the effect of grinding all the consolidated applications to a halt. In any event, there is no benefit that a consolidation will achieve that case management and a joint hearing of ripe applications cannot achieve in due course.

11. The remainder of this affidavit is structured as follows.

11.1. First, for background purposes, I briefly describe the HFA's main application, and the grounds on which it contends that the NHI Act is unconstitutional and invalid. I also briefly describe the other pending applications.

11.2. Second, I address the stay application. I demonstrate that it would be contrary to the interests of justice for this Court to grant a stay, particularly having regard to the inordinate delay it would cause to the finalisation of the HFA's application, and the substantial prejudice and harm that the implementation of the NHI Act in the interim would cause.

11.3. Third, I address the consolidation application. I demonstrate that it would neither be convenient nor appropriate for the HFA's application to be consolidated with the other matters challenging the constitutionality of the NHI Act.

11.4. Fourth, I respond to Dr Crisp's founding affidavit paragraph-by-paragraph, to the extent necessary.

THE HFA'S MAIN APPLICATION

12. On 15 May 2024, the President signed the NHI Act into law. The HFA launched its application challenging the constitutionality of the NHI Act on 4 June 2025.

13. In its application, the HFA contends that the NHI Act is unconstitutional on the following grounds.

14. First, the NHI Act is irrational.

14.1. Despite the massive financial implications for the country's healthcare system and economy, the government never undertook a costing and modelling exercise for the proposed structural overhaul of the healthcare system, nor did it assess or investigate the financial and practical feasibility of the NHI Act.

14.2. As a consequence of this failure, an NHI Act was produced, which is wholly unworkable and substantively irrational. Even assuming generous cost savings and efficiencies, providing anything close to "*comprehensive*" coverage for every person is fiscally impossible under the NHI.

15. Second, the NHI Act results in an unreasonable and unjustifiable severe infringement of the constitutional right of access to healthcare of existing medical scheme beneficiaries.

15.1. The NHI Act will inevitably result in a drastic reduction in access to fundamental healthcare services for the 9.1 million existing medical scheme beneficiaries.

15.2. This reduction in access will manifest in the rationing of services, medicines, and medical products, as well as long waiting periods for medical procedures.

15.3. The NHI Act is an unreasonable, unjustifiable and unconstitutional infringement of the right of access to healthcare in section 27(1) of the Constitution.

16. Third, the NHI Act contravenes the state's obligation in section 27(2) of the Constitution to adopt reasonable measures to achieve the progressive realisation of access to health care services. This is because, amongst other reasons, it cannot ensure the requisite financial and human resources, and it violates the principle of non-retrogression.

17. Fourth, the sweeping and unchecked power conferred on the Minister of Health under the NHI Act is unconstitutional. The NHI Act confers on the Minister the authority to determine the scope, nature, and funding of healthcare services; the relationship between public and private providers; accreditation criteria for facilities; and the moment at which medical schemes may only offer complementary cover. The NHI Act provides no constitutionally appropriate parameters to constrain how the Minister should exercise these powers.

18. The HFA has accordingly applied to this Court to declare the NHI Act unconstitutional and invalid in its entirety. In the alternative, it seeks to declare only sections 7(2)(f)(i), 31(2), 33, 39(2)(c)(i), 49(2)(a)(ii) and 55 unconstitutional and invalid.

THE OTHER APPLICATIONS

19. Other parties have also instituted proceedings to challenge the constitutional validity of provisions in the NHI Act. These include

applications instituted by Solidarity Trade Union ("*Solidarity*"), the Hospital Association of South Africa ("*HASA")*, the South African Medical Association NPC ("*SAMA*") and the South African Private Practitioners Forum ("*SAPPF*"). I refer to these applications as the "*legislation challenges*".

20. Other parties, the Board of Healthcare Funders NPC ("*BHF*") and the SAPPF, have applied to review and set aside the President's decision to assent to and sign the NHI Act. I refer to these as the "*assent challenges*".

21. Both the BHF and the SAPPF instituted assent challenges in the High Court. In response, the Minister and President raised points of law alleging that the Constitutional Court has exclusive jurisdiction in relation to these issues, that the President's decision is not reviewable, and that the review does not trigger the obligation to produce the Rule 53 record.

22. The BHF and the SAPPF have also brought conditional assent challenges in the Constitutional Court. In essence, if it is found that the Constitutional Court has exclusive jurisdiction to determine the lawfulness of the President's decision to assent to the NHI Act, then the BHF and SAPPF seek to review and set aside the President's decision in the Constitutional Court.

23. The High Court dismissed the points of law, holding that it has jurisdiction, that the President's decision is reviewable, and that the President is obliged to deliver a record.

24. The Minister and the President:

24.1. applied conditionally to this Court for leave to appeal to the SCA; and

24.2. applied for leave to appeal directly to the Constitutional Court on the basis that they would withdraw their application for leave to appeal that is pending before this Court if leave is granted to the Constitutional Court.

THE STAY APPLICATION

The proposed stay

25. The Minister and Director-General seek an order staying and suspending the time periods for the filing of further process, in all five of the legislation challenges, including the HFA's application.

26. The stay is sought pending a final decision by the Constitutional Court in all of, or which has the effect of disposing of, all of the following matters:

26.1. the President's and the Minister of Health's applications in terms of section 167(6)(b) of the Constitution for leave to appeal directly to the Constitutional Court against the judgment of this Court, per Twala J, in *Board of Healthcare Funders of Southern Africa NPC v the President of the Republic of South Africa* (Case No 2024-058172) ("*the BHF HC application*") and *South African Private Practitioners Forum v the President of the Republic of South Africa* (Case No 2024-11209) ("*the SAPPF HC application*") and any appeals for which leave is granted;

26.2. the President and the Minister's direct applications to the Constitutional Court in terms of section 167(6)(a) of the Constitution for relief pertaining to the reviewability of the President's decision to assent to and sign the NHI Act, the applicability of Rule 53, and the question whether or not the President is obliged to make available the record of his decision;

26.3. the conditional application to the Constitutional Court by the BHF in terms of section 167(6)(a) of the Constitution for the review of the President's decision to assent to and sign the NHI Act in *Board of Healthcare Funders NPC v the President of the Republic of South Africa and the Minister of Health* (CCT254/24) ("*the BHF CC application*");

26.4. the conditional application to the Constitutional Court of the SAPPF in terms of section 167(4)(e) of the Constitution for the review of the President's decision to assent to and sign the NHI Act and SAPPF's conditional application for leave to intervene in the BHF CC case in *Southern African Private Practitioners Forum v the President of the Republic of South Africa* ("*the SAPPF CC application*"); or

26.5. if the Constitutional Court declines to grant leave to appeal directly or to hear the direct access applications, the applications for leave to appeal to this Court, per Twala J, in the BHF HC case and SAPPF HC case, and, should he refuse leave, any applications for leave to appeal in terms of section 17(2)(b) of the Superior Courts Act No. 10 of 2013 and any appeals heard pursuant thereto, including any

applications for leave to appeal to the Constitutional Court against a decision by the Supreme Court of Appeal and any appeals heard pursuant thereto.

27. In order to fully appreciate the interminable nature of the proposed stay, it is necessary to say something about the proceedings described above.

28. The proceedings in paragraph 26.1 above concern the application by the Minister and the President for leave to appeal the decision of Twala J. This is, in essence, an appeal against the dismissal of the state's *in limine* law points regarding reviewability, jurisdiction, and the Rule 53 record.

29. Paragraph 26.2 refers to an application for direct access to the Constitutional Court on the same *in limine* questions that Twala J decided. This is an alternative prayer in the Minister and President's notices of motion in the Constitutional Court. To the extent necessary, they seek direct access to have these questions determined by that Court.

30. Paragraphs 26.3 and 26.4 are the conditional applications brought by the BHF and SAPPF directly in the Constitutional Court to review the President's decision to assent to the NHI Bill. These applications are essentially conditional on it being found that the High Court does not have jurisdiction to adjudicate the reviews (and that the Constitutional Court has exclusive jurisdiction).

31. Paragraph 26.5 above caters for the eventuality that the Constitutional Court refuses the Minister and President leave to appeal or direct access. This paragraph makes the stay subject to leave to appeal being sought against

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the judgment of Twala J in the High Court and/or the Supreme Court of Appeal, and the determination of any appeal.

32. The legal requirements for a stay of proceedings are matters for argument and will be addressed as such. I make only the following brief remarks for present purposes.

33. This Court has the inherent power under section 173 of the Constitution to stay proceedings and suspend further processes where the interests of justice so demand.

34. The ultimate test is whether granting a stay is in the interests of justice. In exceptional circumstances, it may be in the interests of justice to grant a stay pending other proceedings. Given the right of every party to have its dispute resolved in fair public hearing in terms of section 34 of the Constitution, a court will only grant a stay where the other proceedings will, with sufficient certainty, determine a material, live issue in the stayed case, and where the balance of prejudice clearly favours the stay.

35. As I shall explain, however, the present situation does not satisfy these requirements. The pending proceedings in the assent challenges will not determine the live and unresolved issues in the legislation challenges. Moreover, the granting of the stay would impose severe prejudice on the HFA and undermine its constitutional right of access to court and a prompt and fair determination of its constitutional challenge.

36. The premise of the stay application is that the Constitutional Court might give a judgment in which it reviews and sets aside the President's decision

to assent to the NHI Act, and consequently declare the Act to be invalid and of no force and effect. The applicants suggest that, in the light of the possibility of this eventuality, which they say would render the legislation challenges moot, it would be in the interests of justice to stay the legislation challenges pending the Constitutional Court's determination of the assent challenges.

37. However, as I shall explain in this affidavit:

37.1. the eventuality is entirely speculative, and there is every likelihood that, after the passage of several years, the assent challenges will begin anew in the High Court, and the HFA will have been precluded over that lengthy time from advancing its own case;

37.2. the setting aside of the President's decision to assent to the NHI Act would not in itself render the HFA application moot, and would not be dispositive of the HFA's legislation challenge; and

37.3. in the absence of an appropriate undertaking not to implement the NHI Act, the HFA, its members, their beneficiaries, and the South African public will suffer immediate and irreparable harm, but the HFA will be unable to progress its constitutional challenge to mitigate that harm.

Inordinate delay

38. Even on a conservative estimate, the proposed stay would persist for several years, during which time the President may commence the NHI Act, and the Minister may implement the Act.

39. The Minister and the Director-General acknowledge that there are "*several potential outcomes*" of the matters currently before the Constitutional Court.

40. They also acknowledge that, amongst these potential outcomes, is the following.

41. The Constitutional Court might dismiss the President's and Minister's applications for direct leave to appeal and direct access on the grounds that the High Court has jurisdiction, and the matter does not engage the Constitutional Court's exclusive jurisdiction. If the Court reasoned on this basis, it would also likely decline to entertain the SAPPF and BHF's conditional applications for direct access, as these applications are premised on the Constitutional Court having exclusive jurisdiction.

42. In that event, the matter would likely be remitted to the High Court.

43. In terms of prayer 2.6 of the notice of motion, the stay would persist pending the President and Minister seeking leave to appeal, first from the High Court, and, if unsuccessful, then from the Supreme Court of Appeal. Any decision by the Supreme Court of Appeal would then be subject to a further application for leave to appeal to the Constitutional Court.

44. I am advised that all these steps could easily take in the region of five years or more to conclude.

45. And all of this would only be to deal with the preliminary questions of reviewability and the obligation to produce the Rule 53 record. Those questions, of course, have no bearing at all on the HFA application. The HFA application thus stands to be held up for many years, while an unrelated interlocutory dispute winds its way through the court hierarchy.

46. The applicants anticipate this possibility. They say that, at that stage, "*there would be the opportunity to ask the High Court to decide the review separately and before the other issues are determined, which would also represent a significant saving of judicial and party resources.*"

47. In other words, in the event, after all these years, that the review application is remitted to the High Court, the applicants clearly anticipate that they may at that stage ask this Court to "*decide the review separately and before the other issues are determined*" – in other words, to hold the legislation challenges in *further* abeyance.

48. Another alternative is that the Constitutional Court might determine the review of the President's decision itself. Even that, considering the time necessary for the filing of a record, affidavits and heads of argument, the hearing of argument and the writing of a judgment, could easily take in the region of two years or more.

49. And again, even on the applicants' own version, that time would be *wasted* if the Constitutional Court were to uphold the arguments advanced by the

Minister and the President themselves – i.e. that the President acted lawfully and rationally by assenting to the NHI Act.

50. On the applicants' version, in other words, it is only in the scenario where the Constitutional Court (i) agrees to entertain the review; and (ii) reviews and sets aside the President's decision, that the stay application would "*prevent parallel enquiries into the constitutionality of the Act*".

51. As I shall explain in the following section, this is not the effect of the stay application at all. The assent challenges enquire into the President's *conduct*, whereas the legislation challenges enquire into the distinct question of the constitutionality of the *NHI Act* itself. For present purposes, however, my point is a different one. It is that, on the applicants' own version, their stay application only achieves any benefit if one speculative permutation (amongst many possibilities) plays out. And that permutation depends on the Minister and the President being unsuccessful in the review proceedings.

52. Section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

53. The proposed stay would undermine the HFA's right to have its constitutional challenge adjudicated expeditiously or at all.

54. The HFA represents some of South Africa's largest and most prominent medical schemes, which constitute approximately 73% of open scheme

membership and 46% of total medical scheme membership. The HFA applied to this Court to challenge the NHI Act under section 38 of the Constitution, in its own interest, as an association of medical schemes, in the interests of its members who are medical schemes (and, in turn, their beneficiaries), and in the public interest.

55. The HFA, and those it represents, are entitled under section 34 of the Constitution to have the constitutional validity of this far-reaching legislation adjudicated according to reasonable and fair timelines.

56. Indeed, the *public* has a right to the prompt adjudication of the constitutional validity of this important, far-reaching legislation. Granting the proposed stay would leave serious constitutional questions unresolved for many years, and would mean that when the NHI Act is brought into force, it will operate under a cloud of constitutional uncertainty. That will only undermine public confidence in the legislation and cause further harm to the health system and the economy.

57. I am advised that the applicants' analogy with the granting of a separation is misguided and inapposite. A separation means that, in the interests of convenience, parties to a dispute separate out certain issues between them for prior determination. It is, in other words, a mechanism for the resolution of disputes between the parties in an efficient way.

58. The proposed stay is the opposite. It does not result in the prompt resolution of any disputes that arise in the HFA's application. Instead, it defers the entirety of the HFA's case, while other cases, involving different parties,

raising different issues, and seeking different relief, are litigated over many years.

No parallel enquiries

59. At the heart of the stay application is a fundamental misconception. The applicants contend that, if the Constitutional Court were to decide that the President's decision should be reviewed and set aside, it would render all the legislation challenges to the NHI Act, including that brought by the HFA, moot. They say that one of the benefits of the proposed stay is that it will avoid different courts conducting parallel enquiries into the constitutionality of the NHI Act.

60. But that is not so.

61. First, the granting of leave to appeal against the judgment of Twala J will obviously have no impact on the HFA application. The applicants do not suggest otherwise. Twala J merely decided that the High Court had jurisdiction to determine the review of the President's decision to assent to the NHI Act, that the decision is reviewable, and that the Rule 53 record must be produced. So, staying the HFA's application pending the final determination of the state's appeal against the judgment of Twala J cannot serve the purpose of avoiding parallel enquiries.

62. Even insofar as the review relief is concerned, the enquiry is fundamentally distinct from that raised in the legislation challenges. If the relief sought in the review applications brought by the SAPPF and BHF is granted, the President's decision to assent to the Bill will be reviewed and set aside. The

relevant question for purposes of assessing the President's decision is not whether the Act is substantively unconstitutional. The question in the application for leave to appeal against the Twala J judgment is whether the President acted lawfully and rationally in determining that the Bill did not require referral to Parliament for reconsideration.

63. The President may have acted unlawfully and irrationally, notwithstanding the objective constitutionality of the NHI Act. Conversely, the President may have acted lawfully and rationally notwithstanding the objective unconstitutionality of the NHI Act. The enquiries are different and independent.

64. At the level of remedy, if the review applications brought by the SAPPF and BHF were to succeed, the NHI Bill would be remitted to the President to decide whether to assent to the Bill again, or whether to remit it to Parliament for reconsideration.

65. Again, this would not render the HFA's application moot.

65.1. If the President decided to assent to the Act again, this time acting lawfully and rationally, the Act would again be law. There is no reason to think that the President would not assent to the Act again.

65.2. If the President decided to remit the Bill to Parliament for reconsideration, Parliament would be at large to pass the Act in unchanged form, to tinker with the Act, or to make wholesale changes. Because Parliament would not be reconsidering the Act in the face of any findings of substantive unconstitutionality, there is

no reason to think that any of the HFA's concerns would be addressed.

The meaningless undertaking

66. One of the most glaring reasons why the proposed stay is not in the interests of justice is that, while the HFA and other applications will be stalled for many years, nothing will prevent the President from bringing the NHI Act, or any portion thereof, into force, and the Minister from implementing the Act.

67. In an apparent effort to mitigate the manifest prejudice that the proposed stay will cause, the Minister has undertaken that, for as long as the stay is in place, he shall not promulgate regulations in terms of section 33 of the NHI Act determining that NHI has been fully implemented.

68. However, this undertaking does nothing to mitigate the prejudice caused by the proposed stay.

69. First, the HFA's concerns about the immediate and irreparable harm that the implementation of the NHI Act will cause are not limited to section 33 of the NHI Act. I will address this harm shortly.

70. Second, prior to giving this undertaking, the Minister had already indicated in Solidarity's legislation challenge that he did not intend to introduce regulations under section 33 for another 10 to 15 years. In particular, the Minister has said that:

> "*Crucial to this design is also that the restriction of medical schemes to offering complementary cover under section 33 of the NHI Act will*

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only occur once the NHI Act is fully implemented. This means that medical schemes will still be in operation on a basis similar to that currently in operation for several years during the progressive implementation of the NHI Act. I estimate this to be a period of between 10 and 15 years."[1]

71. So, the Minister's undertaking merely gives effect to what the Minister apparently already intended. The fact that the Minister regards such an undertaking as meaningful does, however, give the Court an indication of just how long he anticipates that the stay might be in place.

Immediate and irreparable impacts

72. Granting a stay of proceedings will cause substantial prejudice to the HFA, its members, their beneficiaries, the healthcare system and the public. In this section of the affidavit, I describe that prejudice.

73. The HFA relies on this prejudice as an important reason why it is not in the interests of justice to grant the stay, which would inhibit the fair adjudication of the HFA's constitutional challenge.

74. I proceed to highlight four categories of irreparable harm that will be inflicted by the NHI Act. These harms are so severe that they cannot be reversed if one or more of the constitutional challenges succeed.

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1 *Solidarity Trade Union v the Minister of Health* (Case No 2024-057 449. Minister's answering affidavit at para 257.

75. These forms of harm are: the closure of medical schemes, adverse selection, the flight of health professionals and investment, and the significant increase in the price of health services that will render access to healthcare not covered by the NHI Fund unattainable.

76. In its application challenging the constitutionality of the NHI Act, the HFA explained that medical scheme beneficiaries and the public healthcare sector will suffer the negative impact of NHI even before the Act is fully implemented. HFA instructed Genesis Analytics (Pty) Ltd ("*Genesis*"), a firm of independent economists, to consider the financial feasibility and impact of the NHI Act. Genesis conducted a forensic economic analysis that examines the financial and fiscal feasibility of the proposed NHI Fund, and its impact on access to health services for South Africans.

77. I attach the Genesis Report marked "AA1". The confirmatory affidavits of the primary authors of the Genesis report – Stephan Malherbe, the Chair of Genesis, and Thembalethu Buthelezi and Robert Lipshitz, partners at Genesis – are attached marked "AA2" to "AA4", together with their respective *curricula vitae*.

78. In this affidavit, as in its application to challenge the constitutionality of the NHI Act, the HFA relies on the expert evidence of Genesis. I have attached the Genesis report to this affidavit (rather than merely cross-referenced to it in the HFA's constitutional challenge), because the Minister and Director-General have instituted this application under a new case number, and I understand that the Court may not have easy access to the papers in the HFA's constitutional challenge.

Loss of medical scheme cover

79. The first way in which the public healthcare sector will suffer the negative impact of NHI even before the NHI Act is fully implemented is that substantial additional funding will be required during the transitional period in order to begin rolling out a comprehensive package of benefits for 50 million people.

80. To fund the coverage of health services during Phases 1 and 2 of NHI, government will inevitably have to raise taxes.[2] The increase in taxes to fund the implementation of the NHI Act will render medical scheme membership unaffordable for hundreds of thousands, if not millions, of current medical scheme beneficiaries, who will likely exit their medical schemes.

81. In the most immediate phase, funds will be raised for the implementation of the NHI through the abolition of tax credits, which currently constitutes a critical element of the South African healthcare system.

82. The tax credit – i.e. giving a fixed rebate on taxes that are payable by medical scheme members – is a means by which government relinquishes potential tax revenue in exchange for not having to provide public healthcare to medical scheme beneficiaries. The tax credit provides significant relief to millions of medical scheme members and their dependents. This is particularly important for those with lower and middle incomes. The tax credit currently allows for a fixed rebate in taxes payable by taxpayers, dependent only on the number of medical scheme beneficiaries paid for by

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2 Genesis report at section 6.6.1 (paragraphs 309).

the taxpayer. For the 2023/2024 tax year, the credit was R364 per month for the main member, R364 per month for the first dependant, and R246 per month for each additional dependant.[3] The effect of the tax credit is to make medical scheme contributions more affordable.

83. The abolition of the tax credit would, without considering its broader impact, and without at this stage considering the possibility that increased tax rates might result in *lower* revenue, raise about R30.4 billion for the fiscus.[4] However, the abolition of tax credits will also have an immediate impact on the ability of the lower-income-earning beneficiaries of medical schemes to continue to afford cover, and hundreds of thousands of current medical aid beneficiaries will, for this reason alone, be pushed past their affordability thresholds and be forced to terminate their medical scheme memberships.

84. Medical scheme beneficiaries are a critical economic group, as they form the heart of South Africa's formal economy. They pay approximately 74% of South Africa's personal income tax, and a large proportion of value-added tax.[5] The financial impact of the abolition of the tax credit would be felt most keenly by low-income taxpaying medical scheme beneficiaries, as the tax credit constitutes a higher proportion of their income. A large proportion, namely 44%, of working medical scheme beneficiaries earn below R16,000 per month, and 83% earn less than R37,500 per month.[6]

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3 Genesis Report at fn 261.
4 Genesis Report at section 6.6.2 (paragraph 316.1).
5 Genesis report at section 2 (paragraph 26).
6 Genesis Report at section 2 (paragraph 25)

85. Genesis estimates that the removal of the tax credit will push between 400,000 and 700,000 into a position where their existing medical schemes would become unaffordable.[7] As additional taxes are raised for incremental implementation, more members are expected to drop off, as modelled by Genesis and outlined below.[8] In particular:

85.1. Genesis projects that "*the removal of the tax credit would increase the proportion of income spent on medical scheme contributions by up to 4% for low-income taxpaying households and by a lower percentage for higher income households, on average.*"[9]

85.2. The increase in medical scheme contributions will mean that "*[a]cross the income distribution, the removal of the tax credit will push between 400 000 (16% affordability threshold) and 700 000 (8% affordability threshold) into a position where their existing medical schemes becomes unaffordable.*"[10]

86. This effect will only be exacerbated as further tax increases are implemented to fund the implementation of the NHI Act. Genesis has calculated the number of medical scheme beneficiaries who would drop off medical schemes due to unaffordability, depending on whether the tax increase aims to raise an additional R100 billion, R200 billion, or R280 billion to fund the NHI. To achieve this, Genesis has established affordability thresholds for a household's income that can reasonably be devoted to

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7 Genesis report at section 6.6.3 (paragraph 320).
8 Genesis report at section 6.6.1 (paragraph 310).
9 Genesis Report at section 6.6.3 (paragraph 319).
10 Genesis Report at section 6.6.3 (paragraph 320).

health insurance (or total healthcare costs) without causing undue financial hardship, at 8% and 16%.

86.1. Even a R100 billion NHI tax hike would push 350,000 additional individuals over a 16% affordability threshold, swelling to 850,000 people if the threshold is set at 8%.[11]

86.2. Should the NHI require R200 billion in additional taxes, a further 800,000 people would exceed a 16% affordability threshold. That figure jumps to 1.85 million if the threshold is 8%.[12]

86.3. Out of 9.1 million medical scheme beneficiaries spanning all income levels, imposing an NHI tax to raise R280 billion would push an estimated 1.3 million to 3.3 million beneficiaries beyond the affordability threshold, depending on whether the cutoff is set at 8% or 16% of income.[13]

87. The beneficiaries who drop off medical scheme cover will then either need to fund their healthcare expenses on an out-of-pocket basis (which is highly regressive and unlikely, given that those who can no longer afford medical scheme contributions will struggle to self-fund doctor visits, procedures, and prescriptions) or, more realistically, by turning to the public health system.

88. The medical demands of the 400,000 to 700,000 medical scheme beneficiaries expected to lose cover if only the medical scheme tax credit

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11 Genesis Report at fn 262.
12 Genesis Report at fn 262.
13 Genesis Report at section 6.6.4 (paragraph 323).

disappears will immediately add to the already overburdened public healthcare system:

88.1. Simply providing 700,000 former medical scheme beneficiaries with basic coverage in the public sector will cost the state an extra R3 billion annually. This is calculated based on a basic benefit package at a cost of R400 per life per month, in accordance with the Council for Medical Schemes Circular 53 of 2022, with inflation adjustments.

88.2. Offering the same benefits package to the same number of people as the Prescribed Minimum Benefits currently available to them under the medical schemes to which they are currently beneficiaries would increase costs for the public healthcare sector to approximately R9.6 billion per year. This is calculated based on the Council for Medical Schemes' 2023 Industry Report, which estimates that Prescribed Minimum Benefits cost R1,145 per month in 2023.

88.3. These extra costs would dilute any "*gain*" from removing the tax credit. While the fiscus would raise more tax revenue if the removal of the tax credit is looked at in isolation, it will ultimately be required to fund newly uninsured individuals turning to the public health sector.

89. As younger and healthier members drop off medical schemes, scheme costs for the remaining members will spike, causing further drop offs. The

contributions of the remaining members will increase significantly, sparking what is described as an "*actuarial death spiral*", whereby contribution increases lead to more drop-offs, which in turn lead to more contribution increases.

90. As a result, medical schemes will be forced to close down, leaving former beneficiaries with no feasible route to the healthcare services to which they once had access.

91. The harm to these former beneficiaries is irreparable. It will only be the very wealthy who will be able to afford out-of-pocket payments to obtain healthcare outside of NHI. The remainder will have no choice but to forego access to timely services, or to services (including medicines) that are not available through the NHI Fund.

Adverse selection

92. The second way in which the public healthcare sector will suffer harm even before the NHI Act is fully implemented arises from adverse selection, a phenomenon whereby younger, healthier members are the first to abandon their medical scheme coverage once it becomes more expensive.[14]

93. Because these younger, healthier individuals typically pay more in contributions than they claim, they effectively cross-subsidise older or sicker beneficiaries who generally incur higher medical costs.[15]

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14 Genesis Report at section 6.6.
15 Genesis Report at section 6.6.4 (paragraph 325).

94. Once the tax credit is removed, or taxes are increased, it is precisely this younger, healthier, low-risk group that will be most inclined to withdraw from medical schemes.[16] The remaining pool will then be disproportionately elderly and higher-risk, meaning the average *per capita* costs will rise significantly.[17] Medical schemes will be forced to increase contributions for those who remain, which will, in turn, drive out more cost-sensitive - and usually healthier - members.[18]

95. As explained by Genesis, this dynamic quickly escalates into the "*death spiral*" described above, where each round of contribution hikes prompts further departures, thereby pushing contributions even higher, and jeopardising the sustainability of the entire medical scheme sector.[19]

96. This cycle risks collapsing schemes or making the few remaining, highly comprehensive plans, prohibitively expensive.[20] Ironically, the very households who lost their medical scheme coverage will still pay the NHI tax, yet no longer receive the robust coverage they once had. This transition is regressive - it hurts lower-income earners the most.

97. The transition to the full implementation of NHI will undermine the ability of medical schemes to provide an affordable means of cover. The detailed evidence set out in the Genesis Report makes plain that medical scheme beneficiaries, particularly of the lower-income group, will face an immediate

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16 Genesis Report at section 6.8 (paragraph 360).
17 Genesis Report at section 6.8 (paragraph 360).
18 Genesis Report at section 6.8 (paragraph 360).
19 Genesis Report at section 6.6.4 (paragraphs 329/30).
20 Genesis report at section 6.6.4 (paragraphs 329/30).

impairment of their right to access health care services, even before the NHI has been fully rolled out.

Loss of investment and human resources

98. The third way in which the public healthcare sector will suffer the negative impact of NHI even before the NHI Act is fully implemented manifests in the reduction in the number of health service professionals required to provide healthcare services.

99. South Africa already suffers from low health professional ratios. This is acknowledged by the Government, whose own analysis confirms the need for additional healthcare workers to be trained:

> "*Compared to other middle-income countries, South Africa has a shortage of medical doctors and specialists. To improve the country's doctor-to-patient ratio, government has increased the number of doctors trained at domestic medical schools through a combination of bursary schemes that target students from underprivileged areas, and has increased the general intake at medical schools.*"[21]

100. As Genesis points out, in one analysis by the National Department of Health, they "*identified the additional health workers that would be required for the health worker densities of the six lowest ranked provinces to be improved to the level of the province with the third highest health worker*

[21] South African Government. 2024. *Health.* Avalable: **https://www.gov.za/about-sa/health**.

density. To meet this goal by 2025, a total of 96,586 additional public health workers would be needed. This is a modest goal – raising the poorest performing provinces to the province in third position – but it still constitutes a 34% increase on total current South African health workers."[22]

101. This is in the context where doctors are highly mobile, with many emigrating to OECD countries. According to the World Bank, over the last two decades, South Africa has experienced net losses of physicians to OECD countries.[23] A related study found that for every 100 physicians that graduated from South African medical schools, at least 30 had moved to OECD countries.[24] A further analysis cited by Genesis shows that 21.6% of South Africa trained physicians (11 224) were already actively registered to practice in Australia, Canada, New Zealand, the US, or the UK.[25] Even more recently, the Minister confirmed in Parliament that according to the Department's PERSAL system, between 2013 and 2025, 12,745 doctors and 58,897 nurses resigned from public healthcare facilities. I attach a copy of the Minister's written reply that was submitted to the National Assembly as "AA5".

102. The risk of health professionals exiting the health sector is material. In August 2024, the SAPPF conducted a survey ("*the SAPPF Survey*") of its members to assess the response of health practitioners to the anticipated

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[22] Genesis report at section 3.2.2.1 (paragraph 66.1).
[23] Ivins, C. et. al. 2022. The future of medical work in Southern Africa: case study of the future of medical work and the impact of the COVID-19 pandemic on medical work in South Africa. World Bank Discussion Paper. Washington: World Bank Publications.
[24] Tankwanchi, A. 2019. International migration of health labour: monitoring the two-way flow of physicians in South Africa. BMJ Health Journal.
[25] Genesis report at section 3.2.2.1 (paragraph 67.3).

NHI. The SAPPF Survey is annexed to the SAPPF application challenging the NHI Act. It shows that, of the more than one thousand participants in the SAPPF Survey, 305 indicated that they would "*definitely*" emigrate from South Africa, 275 indicated that they would "*definitely*" close their practice, and 175 indicated that they would "*definitely*" pursue a different career.[26] If forced to accept significantly reduced rates or wait for uncertain reimbursements, more professionals will emigrate or retire early, inducing a serious healthcare workforce crisis.

103. The exit of health professionals will occur at the same time as the demand for health care resources (doctors, nurses, health facilities) increases under the NHI Act. Currently the NHI Act assumes that the significant increase in health expenditure will be capable of absorption. This is a false assumption – health resources, and particularly human resources, are in short supply. The increase in expenditure will require a commensurate increase in health professionals (amongst other resources). On the comprehensive care model, health resources would have to increase by 77%.

104. Once health professionals migrate out of the health system, the impact will be irreversible. In many instances, this will happen long before NHI is fully rolled out.

105. The implementation of the NHI Act is also likely to have a negative impact on healthcare investment. The HFA has pointed out in its submission to Parliament, a copy of which is attached as "AA6", that due to policy

[26] SAPPF Founding affidavit, page 126 para 315.

uncertainty, particularly in respect of section 33 of the NHI Act, healthcare investment will be dissuaded, and healthcare practitioners will be driven out:

> "*there have been material consequences from an investment perspective. For example, Discovery Group – owner of one of South Africa's largest medical scheme administrators – and all three corporate hospital groups, namely Life Healthcare, Netcare and Mediclinic, experienced significant declines in their share price following the publication of the 2019 version of the NHI Bill.*
>
> *Clause 33 of the Bill curtails the ability of schemes to cover healthcare services. This deters foreign (and local) investment in such entities, which has implications not only for the private healthcare sector, but for the broader economy as a whole. Limiting the role of medical schemes in healthcare provision has significant implications for healthcare practitioners and creates an incentive for them to consider leaving South Africa. It will become increasingly difficult to attract foreign direct investment in the absence of the guarantee that companies can provide access to high-quality healthcare for their employees. This has a very real impact on the country's economic trajectory and is a concern that must be taken seriously.*"

Catastrophic expenditure

106. The fourth and final way in which the public healthcare sector will suffer the negative impact of NHI even before the NHI Act is fully implemented is by means of the irreparable damage arising from the NHI's impact on the cost of healthcare services.

107. Genesis explains that NHI is more likely to face *increasing* prices as demand for healthcare resources grows. The demand will grow in circumstances of constrained supply of health services. This constraint is evident in at least three respects:

107.1. The first is the existing shortage of healthcare professionals, as referred to above.

107.2. The second is the emigration of doctors and nurses from the system.

107.3. The third is a result of section 39 of the NHI Act, which requires that health service providers and health establishments be accredited by the NHI Fund to provide services. Those who are not certified with the Office of Health Standards Compliance will not be permitted to render services to the NHI Fund.

107.4. While the importance of enforcing the quality of services is not in dispute, the inevitable consequence will be a reduction in the supply of health services. Although section 39(12) of the NHI Act permits conditional accreditation to a provider or health establishment, such

accreditation would be temporary and subject to meeting the required criteria within a particular time frame in order to protect the public from poor-quality health services. I note, however, that the section is conspicuously silent on this.

108. The surge in demand and constrained supply will result in escalating prices for health services.

109. The price escalation may not have an impact on those who seek services covered by the NHI Fund. However, the NHI Act stipulates that individuals will pay for services not covered by the NHI Fund through out-of-pocket expenses or complementary cover. The Minister of Health states expressly in his affidavit in the Solidarity case that:

> "*if the Fund refuses to pay for a treatment on the basis that it is not medically necessary or part of the benefits covered by the Fund, the user may still access that treatment if their health care provider considers it more optimal. The user will however have to pay for it out of pocket or through complementary insurance*".[27]

110. Complementary medical scheme cover will be prohibitively expensive, except for a small sliver of the population, for the reasons I have already explained. This means that most individuals would have to pay out-of-pocket for services that are not covered by the NHI Fund, to the limited extent that they are able to afford to do so.

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[27] Para 355.8

111. The cost of accessing services under NHI is prohibitive because:

111.1. the increased demand will result in an increase in prices of health services, which effect is magnified in circumstances in which the implementation of the NHI Act constrains the supply of services; and

111.2. even charitably assuming a shared resources model, the increased taxation will mean a significantly reduced after-tax income for taxpayers. For the "*millions of taxpayers who currently do not belong to medical schemes, their after tax-incomes will decline by between 10% and 15%.*"[28]

112. Under the NHI Act, taxpayers, particularly those who are not currently medical scheme beneficiaries, will be left with less money in their pockets after tax, while having to pay more for healthcare services. The impact of the NHI Act will be to fundamentally alter the pricing of health services for the worse, exposing millions of people to the risk of catastrophic expenditure, which is directly at odds with the NHI Act's *raison d'être*. Currently, South Africa has one of the lowest out-of-pocket payment ratios for healthcare services in the world, at 6.7% of total health expenditure.[29] The NHI Act will regressively reverse this.

113. The damage to the health system because of these impacts will be ruinous at a systemic level. At an individual level, these systemic failures will

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[28] Genesis report at section 9.2 (paragraph 531).
[29] Genesis report at section 6.7 (paragraph 337).

translate into irreparable and severe harm in the form of serious health complications, untreated conditions, the inability to access timely healthcare intervention, a failure to halt the progression of a disease in time, disability and death.

114. Rationing of healthcare services is inevitable in the already overburdened public health system. The extent of rationing will expand as resources become scarce and prices rise.

No prejudice to the applicants

115. In contrast with the immediate and irreparable harm described above, including to the HFA's constitutional right of access to court, refusing the stay sought in this application causes no legally cognisable prejudice to the Minister or Director-General.

116. Indeed, the only prejudice to which the applicants are able to point is the cost and burden of litigation. However, the state assumed this burden when it enacted legislation as far-reaching as the NHI Act. There is nothing unfair about requiring government to defend the laws that it makes. It is simply the corollary of the right of everyone to challenge those laws in a fair public hearing before a court.

117. If anything, the existence of several challenges to the NHI Act and the President's decision to assent to the Act, is a consequence of widespread concern about the constitutionality of the NHI Act. It only underscores the importance of a definitive court judgment, not only for the applicants, but for the public and for government itself.

118. A stay of proceedings only serves to prolong a period of healthcare policy stasis. There is no suggestion of irreparable harm to the Minister and Director-General should the matter proceed. At best, there is a complaint of inconvenience and litigation cost. That pales into insignificance when compared to the clear prejudice that a stay would inflict on the HFA, its members, their dependents and the public.

THE CONSOLIDATION APPLICATION

119. The Minister and the Director-General also seek an order consolidating the HFA's application with the following matters, which concern the constitutionality of the NHI Act:

119.1. *Solidarity Trade Union v the Minister of Health* (Case No 2024-057 449);

119.2. *Hospital Association of South Africa v the Minister of Health* (Case No 2025-020969);

119.3. *the South African Medical Association NPC v the Minister of Health* (Case No 2025-045340); and

119.4. *the South African Private Practitioners Forum v the President of the Republic of South Africa* (Case No 2024-11209).

120. I am advised that, in exercising its discretion as to whether to order a consolidation, the Court will consider the overarching requirement of convenience. This connotes not only expedience or ease, but also appropriateness in the sense that the procedure would be convenient if, in

all the circumstances of the case, it appears to be fitting and fair to the parties concerned.

121. The Minister and Director-General have failed to advance a single cogent reason as to why consolidation, as opposed to the joint and simultaneous hearing of any matters that are ripe for adjudication, would be convenient, fair and appropriate. While all the applications sought to be consolidated generally seek to challenge the NHI Act, each is grounded in distinct legal arguments and separate evidence.

122. In sum, a consolidation of the legislation challenges would be manifestly inconvenient for the following reasons.

123. First, contrary to the applicants' claims, the issues that arise in the HFA's application are fundamentally different to those arising in the other applications.

123.1. It is only because the Minister and Director-General deal with the issues at a level of extreme generality, as addressing "*financial feasibility*" or "*the role of medical schemes*", that they can possibly suggest that common issues are raised across all applications. At this level of generality, a great many cases involve common issues and ought to be consolidated according to the applicants' logic.

123.2. However, the HFA application raises facts and legal issues that are unique and which do not arise in the other applications. From a factual, evidentiary, and expert perspective, the overwhelming

focus of the HFA application is the impact that the NHI Act will have on its members and existing medical scheme beneficiaries.

123.3. That is not the primary focus of the other applications sought to be consolidated. And that is not surprising: Solidarity is a trade union; SAPPF a collective of practitioners; SAMA an association of doctors; HASA an association of hospitals. None of these entities approaches the NHI Act in the same way that the HFA does.

123.4. To the extent that there are some overlaps between the applications – and the HFA does not dispute that there are – there is no prejudice to the Minister in being required to replicate the same material in affidavits across multiple matters.

124. Second, consolidation would inflict substantial prejudice on the HFA.

124.1. It would mean, in essence, that the HFA application would be hamstrung from progressing any faster than the slowest-moving matter with which it has been consolidated.

124.2. For example, an interlocutory skirmish in an unrelated matter that is consolidated with the HFA application would result in the HFA application being halted for as long as it takes to adjudicate or resolve the interlocutory dispute. The Minister and the Director-General have already raised the spectre of prolonged interlocutory disputes concerning confidentiality and the production of documents under Uniform Rule 35(12).

124.3. The Minister has also foreshadowed the possibility that he will seek to file further affidavits in response to some of the replying affidavits, and that there may be additional rounds of supplementary answering and supplementary replying affidavits in some matters. He has further stated that further supplementation may also be necessary because of factual developments during the litigation, including the presentation and adoption of new budgets.

124.4. The applications are already at different stages and are likely to become ripe for hearing at different times. Again, consolidation would oblige every party to litigate according to the slowest timetable.

124.5. It would also make for an unwieldy and cumbersome record. The effect of a consolidation is that the evidence in one application becomes evidence in all the applications. The record would run to many thousands of pages, in circumstances where the great majority of those documents are relevant to only one application. This would unfairly escalate the costs of every party which seeks constitutional relief. In the case of the HFA – an association of medical schemes, which are, by law, not-for-profit entities – these costs are ultimately borne by medical scheme members.

125. Third, the consolidation application is, in fact, framed in a manner that recognises that consolidation is not appropriate and that is unfair.

R. T.N.

125.1. In particular, the applicants ask that, although the applications be consolidated, each applicant in the consolidated matter must only be permitted to reply to part of the respondents' answering affidavit that responds directly to that applicant's founding affidavit.

125.2. That is entirely without basis and prejudicial. As explained, once matters are consolidated, the evidence in one matter becomes evidence in all the matters. This means that, in the event of consolidation, an applicant would be at risk of its application being dismissed on the basis of evidence arising in another application. An applicant, therefore, clearly cannot fairly be denied the opportunity to respond to the entirety of the answering affidavit.

125.3. In truth, however, the applicants' attempt to frame the consolidation in this way is borne of a recognition that it is cumbersome and unworkable. So, while they seek consolidation, they simultaneously attempt to limit the applicants' rights to participate fully and fairly in the consolidated matter and seek to confine the applicants to their own matters.

125.4. The approach is plainly unfair. The Minister and Director-General seek to assume for themselves the entitlement to file a consolidated answering affidavit, that is, to address all the applications holistically. Having done so, they cannot fairly deny the applicants the opportunity to reply holistically. Again, the solution is not to proliferate the amount of paper filed in a consolidated matter. It is not to order a consolidation.

126. Fourth, all of the benefits advanced by the Minister and the Director General can be achieved through case management and by allowing the same Court to hear and decide any matters that are ripe, together and simultaneously. This would effectively mitigate the risk of duplication or conflicting judgments, while also retaining the parties' autonomy in litigation. It would also help to ensure that litigants are not prevented by delays in other matters from having their constitutional challenges decided in a fair hearing before a court.

SERIATIM

127. I will now deal with the specific allegations made in the founding affidavit.

128. Since I have already addressed many of the allegations in the thematic sections above, I will not respond to every allegation.

129. To the extent that I may fail to deal with any specific allegation, this is not to be taken as an admission. Any allegation made in the founding affidavit that is not consistent with this affidavit must be taken to be denied.

Ad paragraph 29

130. The review applications concern the constitutionality of the President's decision to assent to the NHI Act rather than the constitutionality of provisions of the NHI Act itself.

Ad paragraph 30

131. I deny that the legislation challenges are of unprecedented volume. In any event, the mere fact that they are factually dense and constitutionally complex does not denude the HFA of its right to a prompt and fair adjudication of its application, which seeks to protect constitutional rights and advance the public interest.

Ad paragraphs 113 to 115

132. I note that the Minister does not intend to obstruct parties in exercising their right to a fair hearing. I am advised that his intention is irrelevant. The granting of a stay will have precisely this effect.

Ad paragraph 135.19

133. I deny that there are no locally available experts who can deal with the issues covered in the applications.

Ad paragraphs 135.19

134. The fact that certain applications may be referred to trial or the hearing of oral evidence cuts against the case for a stay and consolidation.

135. If any of the legislation challenges require a referral to oral evidence, the granting of a stay threatens real litigation prejudice in the form of the availability of witnesses and documents.

136. Moreover, if one of the legislation challenges requires a referral to oral evidence, but another does not, then that constitutes a compelling reason not to consolidate the matters. There is no reason why a matter that can be decided on the papers should await a referral to oral evidence in another matter, before being adjudicated.

Ad paragraph 161

137. As explained above, there is no risk of conflicting judgments by the Constitutional Court and the High Court regarding the constitutionality of the NHI Act.

Ad paragraph 175

138. I have already described the substantial harm that will arise from the implementation of the NHI Act.

Ad paragraphs 179.4 and 179.5

139. I deny that the implementation of the NHI Act will benefit children, pregnant women, the aged, people with disabilities, rural communities and people who currently use the public healthcare system. The Minister and the Director-General are empowered through other legislation, including without limitation the National Health Act 61 of 2003, to advance the rights of access to healthcare of such persons.

Ad paragraph 205.2

140. I deny that it would have been appropriate for HFA to intervene in Solidarity's application. I also deny that the HFA sought to preserve or obtain any tactical advantages or maximise the litigation burden facing the Minister. The HFA instituted a new application because it challenges the NHI Act on substantially different grounds, and based on entirely different evidence, to Solidarity.

Ad paragraph 205.4

141. I deny that the consolidation of the applications will affect the scope of the work required from any expert witnesses instructed by the Minister or the President. As explained, if the same material needs to be used in multiple answering affidavits, it can hardly be considered burdensome to copy-paste that material from one affidavit to another.

Ad paragraph 205.5

142. I deny that the HFA has any unfair advantage being an applicant in its constitutional challenge. It is the Minister that seeks to introduce unfairness by seeking a consolidation but at the same time limiting the material in the answering affidavit to which the HFA may reply.

Ad paragraphs 205.6 and 205.7

143. I deny that the Minister is entitled to use consolidation proceedings to confine the scope of what litigants can include in their replying affidavits.

Ad paragraph 212

144. I deny that the HFA anticipated consolidation with the Solidarity application. The reference to the Solidarity application in its founding affidavit (which I deny was extensive) do not justify a consolidation of the applications.

Ad paragraph 213

145. The HFA's reasons for opposing the consolidation are set out above.

146. The HFA is not aware of any party expressing a willingness to the Minister filing consolidated answering papers.

PRAYER

147. For the reasons set out above, I ask that the application be dismissed with costs, including the costs of three counsel on scale C.

THONESHAN NAIDOO

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Sandton on this 12th day of **AUGUST 2025** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

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